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No. 85-1424

IN THE

Supreme Court of the United States

October Term, 1985

SONAT MARINE INC. as owner of
the BARGE OCEAN STATES,

Petitioner,

v.

AMOCO OIL COMPANY and
BAYCON INDUSTRIES, INC.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR RESPONDENTS AMOCO OIL COMPANY and BAYCON INDUSTRIES, INC., IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

SHOULD THIS COURT EXERCISE ITS DISCRETIONARY CERTIORARI JURISDICTION TO DETERMINE WHETHER A BARGE ACTIVELY ENGAGED IN MARITIME COMMERCE CAN AVOID BEING HELD LIABLE *IN REM* FOR DAMAGES ARISING FROM A COLLISION CAUSED SOLELY BY AN ERROR IN NAVIGATION BY ITS COMPULSORY PILOT UNDER THE RULES OF *THE CHINA*, 74 U.S. (7 WALL.) 53 (1869) AND *STURGIS VS. BOYER*, 65 U.S. 110 (1860)?

PARTIES OF INTEREST

The following listed persons and entities have an interest in the decision of this case, including parent, affiliate and subsidiary corporations:

BAYCON INDUSTRIES, INC. *

BENTON & COMPANY, INC.

INDUSTRIAL CONCRETE INDUSTRIES, INC.

AMOCO OIL COMPANY *

AMOCO CORPORATION (INDIANA)

AMOCO COMPANY (DELAWARE)

AMOCO OIL COMPANY (MARYLAND)

BUSINESS DEVELOPMENT CORPORATION OF NORTH CAROLINA

FIVE STAR ENERGY CORPORATION

HAHN INCORPORATED

AMOCO CHEMICALS COMPANY (DELAWARE)

AMOCO PIPELINE COMPANY (MAINE)

AMOCO PRODUCTION COMPANY (DELAWARE)

AMOCO REALTY COMPANY (DELAWARE)

AMOCO VENTURE CAPITAL COMPANY (DELAWARE)

SONAT MARINE, INC. *

BARGE OCEAN STATES *

* The actual parties to this action as listed in the caption of the case in this Court. Subsidiaries and affiliates of Sonat Marine Inc. are listed in its Petition.

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STATEMENT OF THE CASE

Course of Proceedings Below

Respondents, Amoco Oil Company and Baycon Industries, Inc., brought an action in admiralty for damages stemming from a maritime collision in the United States District Court for the Middle District of Florida, Tampa Division, against Petitioners here, Barge OCEAN STATES *in rem* and Sonat Marine, Inc. *in personam*. (R. 1).[1] Prior to trial, Petitioners moved for entry of summary judgment (R. 53), which was denied by the District Court (R. 64). Petitioners thereafter moved for reconsideration

1/ References are to the Record (R.) as paginated in the Court of Appeals. (PA.) = Appendix to Petition for Writ of Certiorari; (RA.) = Appendix to this Brief in Opposition.

(R. 66), and the District Court entered an Order affirming denial of Petitioners' Motion for Summary Judgment as to the Barge OCEAN STATES, but granting the Motion for Summary Judgment as to Petitioner Sonat Marine, Inc. (RA. 1-3).

Respondents' claims were tried in Tampa, Florida, on August 13, 1984, (R. 89) before the Honorable William J. Castagna, in Admiralty, without a jury. The respective parties submitted post trial memorandums together with proposed findings of fact and conclusions of law. (R. 85, 86, 87). The District Court, on August 16, 1984, entered its Memorandum Findings of Fact and Conclusions of Law determining that Barge OCEAN STATES was solely at fault for the collision (R. 90; PA. 1-6). Judgment was entered accordingly (R. 91).

Appeal was taken to the United States Court of Appeals for the Eleventh Circuit by notice filed August 27, 1984 (R. 92). The Circuit Court, after oral argument, affirmed the judgment. (PA. 9-26).

A Petition for Rehearing and Suggestion for Consideration En Banc were denied. (PA. 27-28).

STATEMENT OF FACTS

Petitioner asks this Court to ignore the fact found by the District Court and affirmed by the Eleventh Circuit (PA. 1-6; 9-26), that an error in navigation by the compulsory pilot of Barge OCEAN STATES was the sole cause of the collision between that vessel, at the time actively engaged in maritime commerce, and Respondents' property.

Barge OCEAN STATES, on the date of collision, was fully operational, had discharged cargo at a terminal in the port of Tampa, Florida, and was being shifted to another dock for Petitioners' commercial purposes and at Petitioners' direction. (R. 90).

A pilot was hired by Petitioner to navigate Barge OCEAN STATES during its shift from dock to dock, and he assumed operational control over the barge, positioned the assisting tugboats as he desired, and gave all orders for undocking and navigation of Barge OCEAN STATES, not from the assisting tugs, but from various positions on the deck and structure of the barge. (R. 80). The pilot misjudged the affects of wind and tide on Barge OCEAN STATES when it undocked, lost control of the vessel, and brought the barge into contact with Respondents' property in order to bring it to a stop and begin the maneuver again. (R. 80).

The sole cause of the collision, as found by the District Court and affirmed by the Eleventh Circuit, was the error in navigation by the pilot of Barge OCEAN STATES which allowed it to go out of control. (PA. 1-6; 9-26).

SUMMARY OF ARGUMENT

Contrary to the claim of the present Petition, neither the District Court nor the Eleventh Circuit Court of Appeals has ignored either the rule of *The China*, 74 U.S. (7 Wall.) 53 (1869), or the rule of *Sturgis vs. Boyer*, 65 U.S. 110 (1860). The conflict asserted by the Petitioner does not exist. This Court historically does not sit as a tryer of fact to resolve disputes of interest only to the parties involved. The present Petition presents no basis for the exercise of this Court's discretion.

The rule of *The China* holds a vessel liable *in rem* for collision damages arising from the error in navigation of its compulsory pilot.

The rule of *Sturgis vs. Boyer* holds that a towed vessel, passive and otherwise without fault, can not be held liable *in rem* for collision damages caused by the faults of others. The rule of *Sturgis vs. Boyer* applies only to vessels passively under the control of a towing vessel and otherwise without fault. The rule of

Sturgis vs. Boyer has no application, as recognized in that opinion, in factual circumstances where error in navigation by those lawfully in control of the towed vessel causes a collision. The prerequisite for application of the rule of *Sturgis vs. Boyer*, that the vessel involved be passive and without contributory fault, is totally absent in the instant case since the District Court and the Eleventh Circuit Court of Appeals agreed that the sole fault for the collision involving Barge OCEAN STATES was the error in navigation committed by its pilot.

This case presents no basis for application of the *Sturgis vs. Boyer* rule, and therefore it presents no basis for resolving an alleged conflict between the Circuits as to the applicability or validity of the *Sturgis vs. Boyer* rule.

ARGUMENT

THE OPINION IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT PROPERLY APPLIED THE RULE OF *THE CHINA*, 74 U.S. (7 WALL.) 53 (1869) IN HOLDING A VESSEL ACTIVELY ENGAGED IN MARITIME COMMERCE LIABLE FOR DAMAGES ARISING FROM A COLLISION CAUSED SOLELY BY AN ERROR IN NAVIGATION OF THE VESSEL'S COMPULSORY PILOT. THE OPINION IS NOT IN CONFLICT WITH THE RULE OF *STURGIS VS. BOYER*, 65 U.S. 110 (1860) IN THAT A VESSEL CANNOT BE CONSIDERED PASSIVE AND FAULTLESS WHEN AN ERROR IN NAVIGATION OF ITS PILOT WAS THE SOLE CAUSE OF A COLLISION.

The assertion that this case somehow presents a conflict between the rule stated in *The China*, 74 U.S. (7 Wall.) 53 (1869), that a vessel is liable *in rem* for the error in navigation of its compulsory pilot, and the rule in *Sturgis v. Boyer*, 65 U.S. 110 (1860) that a towed vessel without fault contributing to a collision can not be held liable *in rem* for collision damages, is without legal or factual foundation. Neither the District Court's Memorandum Findings of Fact and Conclusions of Law, nor the Circuit Court's Per Curium affirmance represent any jeopardy to *The China* or *Sturgis v. Boyer* rules of law. Aside from ignoring the factual circumstance that the servant of Petitioners' vessel was solely at fault for the collision, Petitioner loses light of the fact that this Court does not serve as a "super" appellate court, nor are the United States Courts of Appeals to be utilized as mere stops on the road to the Supreme Court. See *Graver Tank and Mfg. Co. vs. Linde Air Products Co.*, 336 U.S. 271 (1948).

As this Court has repeatedly stated, its certiorari jurisdiction with respect to conflict claims is meant to settle "real and embarrassing" conflicts between the Circuits involving principles "...which [are] of importance to the public as distinguished from that of the parties." *Layne & Bowler Corporation vs. Western Well Works, Inc.*, 261 U.S. 387 (1923). This Court does not grant

certiorari to review evidence and discuss specific facts, especially when the facts which control are subject to the clearly erroneous rule and are of importance only to the specific litigation. *United States vs. Johnston*, 268 U.S. 220 (1925), *Rudolph vs. United States*, 370 U.S. 269 (1962).

The allegedly grave question presented by the issue stated in the Petition simply does not exist. Petitioner, by a selective presentation of facts and case authorities alleges a conflict between rules of law laid down long ago by this Court which are completely compatible in circumstances where a towed vessel's fault is the sole cause of a collision.

The rule of *Sturgis vs. Boyer* and the myriad other decisions cited in the Petition which have followed and/or applied the rule, is that a towed vessel, which is passive and otherwise without fault, can not be held liable *in rem* for damages arising from a collision *caused by the fault of the towing vessel.* Clearly, if some fault or error in navigation on the part of those in control of the towed vessel causes or contributes to the collision, the exculpatory rule stated in *Sturgis vs. Boyer* can have no application.

This Court, in *Sturgis vs. Boyer*, recognized that fault on the part of the towed vessel contributing to the collision created *in rem* liability in that vessel for collision damages:

> Cases arise, undoubtedly, when both the tow and the tug are jointly liable for the consequences of a collision; as when those in charge of the respective vessels jointly participate in their control and management, and the Master or crew of both vessels are deficient in skill, omit to take due care, or are guilty of negligence in their navigation. Other cases may well be imagined when the tow alone would be responsible; as when the tug is employed by the Master or owners of the tow as the mere motive power to propel their vessels from one point to another, and both vessels are exclusively under the control, direction and management of the master and crew of the tow. . . . *Sturgis vs. Boyer*, 65 U.S. 110, 112 (1860). See also *The Mabey vs. Atkins*, 81 U.S. 204 (1872).

The basis for holding a towed vessel liable *in rem* for its faults which contribute to a collision was clearly enunciated in the *Steamtug Eugene F. Moran*, 212 U.S. 600 (1909), wherein the Court stated:

> There is a practical line and a difference in degree between the case where the harm is done by the mismanagement of the offending vessel and that where it is done by the mismanagement of another vessel to which the immediate but innocent instrument of harm is attached. [Id, 604].

The rule of *The China*, stating that a vessel is liable *in rem* for an error in navigation of its compulsory pilot which contributes to a collision, makes no distinction between types of vessels. It is sufficient to apply the rule of *The China* to determine that in fact the compulsory pilot was lawfully in control of the navigation of the vessel involved in the collision, and that the pilot's error in navigation was a contributing fault. *See The Merrimac*, 81 U.S. 199 (1872); *Homer Ramsdell Transportation Co. vs. La Compagnie Generale Transatlantique*, 182 U.S. 406 (1900).

The determination of whether a compulsory pilot is the servant of a particular vessel, and whether the pilot's error in navigation contributed to a collision are questions of fact to be decided by the District Court under the particular circumstances of each case. Upon review, the findings are subject to the clearly erroneous doctrine. *Gulf Oil Corporation vs. The John A. Brown*, 337 U.S. 919 (1949).

Here the District Court found, and the petition does not dispute, that the pilot on board Barge OCEAN STATES at the time of the collision was the barge's servant, and that the pilot's error in navigation was the sole cause of the collision with Respondents' property. Under such factual circumstances the rule of *Sturgis vs. Boyer* is inapplicable.

Petitioners seek to use this Court only as a second appellate body to review issues of fact. The decision below has neither eroded nor affected either the rule of *Sturgis vs. Boyer* or the rule of *The China*, and no conflict exists with decisions from this Court or other circuits.

CONCLUSION

Both the rule of *Sturgis vs. Boyer* and the rule of *The China* are alive and well in the Eleventh Circuit. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX TO BRIEF FOR RESPONDENTS AMOCO OIL COMPANY and BAYCON INDUSTRIES, INC.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

AMOCO OIL COMPANY,

Plaintiff,

vs. Case No. 82-23-Civ-T-WC

BARGE OCEAN STATES, etc., et al.,

Defendants/Third Party Plaintiffs,

vs.

B. F. WILTSHIRE,

Third Party Defendant.

BAYCON INDUSTRIES, INC.,

Plaintiff,

vs. Case No. 82-24-Civ-T-WC

BARGE OCEAN STATES, etc., et al.,

Defendants/Third Party Plaintiffs,

vs.

B. F. WILTSHIRE,

Third Party Defendant.

ORDER

The Court has for consideration the corrected Motion for Reconsideration filed by Defendants/Third Party Plaintiffs Sonat Marine, Inc., Inter-Cities Navigation Corp., and the barge OCEAN STATES. Defendants have asked the Court to reconsider its ruling of September 9, 1983 on their Motion for Summary Judgment.

The Court has reviewed the Defendants' arguments and the cases cited therein and has decided to vacate a portion of its Order of September 9, 1983 dealing with the issue of compulsory pilotage. Upon reconsideration of all the arguments submitted, the Court has concluded that the pilot, B. F. Wiltshire, was indeed a compulsory pilot. The Court now finds that in this case, as in *Hogge v. SS Yorkmar*, 434 F.Supp. 715 (D.Md. 1977), the barge OCEAN STATES was required to employ a pilot pursuant to 46 U.S.C. §§ 391(a) and 364. In re-evaluating its previous holding, the Court has been persuaded that a pilot may be rendered compulsory under the authority of a federal regulation as well as under a state or local statute. At least one court, in *Texaco Trinidad, Inc. v. Afran Transport Co.*, 1983 A.M.C. 1582 (E.D.Pa. 1982), has held that a pilot may be compulsory if required by a berth owner, even in the absence of a government statute or regulation.

As to the defendants' arguments concerning the status of the barge OCEAN STATES as a "dead ship," the Court has reviewed its prior Order and declines to alter its ruling on that issue. Therefore, it is

ORDERED:

1. Defendants'/Third Party Plaintiffs' Motion for Reconsideration is granted in part.

2. The Court's Order of September 9, 1983 is vacated in part.

3. Defendants'/Third Party Plaintiffs' Motion for Summary Judgment is granted to the extent that the Court finds that Pilot B. F. Wiltshire was a compulsory pilot and that therefore Defendants/Third Party Plaintiffs are relieved of *in personam* liability for the pilot's actions.

DONE AND ORDERED at Tampa, Florida this 17th day of November, 1983.

/s/ William J. Castagna
WILLIAM J. CASTAGNA
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record